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SENATE BILL 174

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; MAKING TECHNICAL AMENDMENTS TO THE EDUCATIONAL RETIREMENT ACT; CLARIFYING THE DEFINITION OF SALARY; SPECIFYING HOW MEETINGS MAY BE CANCELED OR RESCHEDULED; ALLOWING THE EDUCATIONAL RETIREMENT BOARD TO DETERMINE THE INTEREST RATE PAID ON MEMBER AND BENEFICIARY REFUNDS; ALLOWING THE BOARD TO PROVIDE BY RULE FOR EXCEPTIONS TO THE PROHIBITION ON WORK DURING RETIREMENT; PROVIDING FOR AN EXCEPTION TO MANDATORY RETIREMENT; REQUIRING THAT A PERSON MUST BE EMPLOYED TO PURCHASE ALLOWED SERVICE CREDIT; EXCEPTING PERSONS WITH PERMANENT DISABILITIES FROM ANNUAL RE-EXAMINATION; LIMITING ASSIGNABILITY OF CONTRIBUTIONS OR BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

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1 "22-11-2. DEFINITIONS. -- As used in the Educational
2 Retirement Act:

3 A. "member" means an employee, except for a
4 participant or a retired member, coming within the provisions
5 of the Educational Retirement Act;

6 B. "regular member" means:

7 (1) a person regularly employed as a teaching,
8 nursing or administrative employee of a state educational
9 institution, except for:

10 (a) a participant; or

11 (b) all employees of a general hospital
12 or outpatient clinics thereof operated by a state educational
13 institution named in Article 12, Section 11 of the constitution
14 of New Mexico;

15 (2) a person regularly employed as a teaching,
16 nursing or administrative employee of a junior college or
17 community college created pursuant to Chapter 21, Article 13
18 NMSA 1978, except for a participant;

19 (3) a person regularly employed as a teaching,
20 nursing or administrative employee of a technical and
21 vocational institute created pursuant to the Technical and
22 Vocational Institute Act, except for a participant;

23 (4) a person regularly employed as a teaching,
24 nursing or administrative employee of the New Mexico boys'
25 school, the New Mexico girls' school, the Los Lunas medical

. 143843. 1

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1 center or a school district or as a certified school instructor
2 of a state institution or agency providing an educational
3 program and holding a standard or substandard certificate
4 issued by the state board, except for a participant;

5 (5) a person regularly employed by the
6 department of education or the board holding a standard or
7 substandard certificate issued by the state board at the time
8 of commencement of such employment;

9 (6) a member classified as a regular member in
10 accordance with the rules of the board;

11 (7) a person regularly employed by the New
12 Mexico activities association holding a standard certificate
13 issued by the state board at the time of commencement of such
14 employment; or

15 (8) a person regularly employed by a regional
16 education cooperative holding a standard certificate issued by
17 the state board at the time of commencement of such employment;

18 C. "provisional member" means a person not eligible
19 to be a regular member but who is employed by a local
20 administrative unit designated in Subsection B of this section;
21 provided, however, that employees of a general hospital or
22 outpatient clinics thereof operated by a state educational
23 institution named in Article 12, Section 11 of the constitution
24 of New Mexico are not provisional members;

25 D. "local administrative unit" means an employing

1 agency however constituted that is directly responsible for the
2 payment of compensation for the employment of members or
3 participants;

4 E. "beneficiary" means a person having an insurable
5 interest in the life of a member or a participant designated by
6 written instrument duly executed by the member or participant
7 and filed with the director to receive a benefit pursuant to
8 the Educational Retirement Act that may be received by someone
9 other than the member or participant;

10 F. "employment" means employment by a local
11 administrative unit that qualifies a person to be a member or
12 participant;

13 G. "service employment" means employment that
14 qualifies a person to be a regular member;

15 H. "provisional service employment" means
16 employment that qualifies a person to be a provisional member;

17 I. "prior employment" means employment performed
18 prior to the effective date of the Educational Retirement Act
19 that would be service employment or provisional service
20 employment if performed thereafter;

21 J. "service credit" means that period of time with
22 which a member is accredited for the purpose of determining his
23 eligibility for and computation of retirement or disability
24 benefits;

25 K. "earned service credit" means that period of

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1 time during which a member was engaged in employment or prior
2 employment with which he is accredited for the purpose of
3 determining his eligibility for retirement or disability
4 benefits;

5 L. "allowed service credit" means that period of
6 time during which a member has performed certain nonservice
7 employment with which he may be accredited, as provided in the
8 Educational Retirement Act, for the purpose of computing
9 retirement or disability benefits;

10 M. "retirement benefit" means an annuity paid
11 monthly to members whose employment has been terminated by
12 reason of their age;

13 N. "disability benefit" means an annuity paid
14 monthly to members whose employment has been terminated by
15 reason of a disability;

16 O. "board" means the educational retirement board;

17 P. "fund" means the educational retirement fund;

18 Q. "director" means the educational retirement
19 director;

20 R. "medical authority" means a medical doctor
21 within the state or as provided in Subsection D of Section
22 22-11-36 NMSA 1978 either designated or employed by the board
23 to examine and report on the physical condition of applicants
24 for or recipients of disability benefits;

25 S. "actuary" means a person trained and regularly

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1 engaged in the occupation of calculating present and projected
2 monetary assets and liabilities under annuity or insurance
3 programs;

4 T. "actuarial equivalent" means a sum paid as a
5 current or deferred benefit that is equal in value to a regular
6 benefit, computed upon the basis of interest rates and
7 mortality tables;

8 U. "contributory employment" means employment for
9 which contributions have been made by both a member and a local
10 administrative unit pursuant to the Educational Retirement Act;

11 V. "qualifying state educational institution" means
12 the university of New Mexico, New Mexico state university, New
13 Mexico institute of mining and technology, New Mexico highlands
14 university, eastern New Mexico university, western New Mexico
15 university, Albuquerque technical-vocational institute, Clovis
16 community college, Luna vocational-technical institute, Mesa
17 technical college, New Mexico junior college, northern New
18 Mexico state school, San Juan college and Santa Fe community
19 college;

20 W. "participant" means:

21 (1) a person regularly employed as a faculty
22 or professional employee of the university of New Mexico, New
23 Mexico state university, New Mexico institute of mining and
24 technology, New Mexico highlands university, eastern New Mexico
25 university or western New Mexico university who first becomes

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1 employed with such an educational institution on or after July
2 1, 1991, or a person regularly employed as a faculty or
3 professional employee of the Albuquerque technical-vocational
4 institute, Clovis community college, Luna vocational-technical
5 institute, Mesa technical college, New Mexico junior college,
6 northern New Mexico state school, San Juan college or Santa Fe
7 community college who is first employed by the institution on
8 or after July 1, 1999 and who elects, pursuant to Section
9 22-11-47 NMSA 1978, to participate in the alternative
10 retirement plan; and

11 (2) a person regularly employed who performs
12 research or other services pursuant to a contract between a
13 qualifying state educational institution and the United States
14 government or any of its agencies who elects, pursuant to
15 Section 22-11-47 NMSA 1978, to participate in the alternative
16 retirement plan, provided that the research or other services
17 are performed outside the state;

18 X. "salary" means the compensation or wages paid to
19 a member or participant by any local administrative unit for
20 services rendered. "Salary" includes payments made for annual
21 or sick leave and payments for additional service provided to
22 related activities, but does not include payments for sick
23 leave not taken unless the payment for the unused sick leave is
24 made through continuation of the member on the regular payroll
25 for the period represented by that payment and does not include

. 143843. 1

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1 allowances or reimbursements for travel, housing, food,
2 equipment or similar items;

3 Y. "alternative retirement plan" means the
4 retirement plan provided for in Sections 22-11-47 through
5 22-11-52 NMSA 1978; and

6 Z. "retired member" means a person whose employment
7 has been terminated by reason of age and who is receiving or is
8 eligible to receive retirement benefits. "

9 Section 2. Section 22-11-4 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 128) is amended to read:

11 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS. --

12 A. The board shall hold regular meetings four times
13 each year and may, by its bylaws, provide for additional
14 regular meetings. Prior to each regular meeting, written
15 notice shall be given to each member of the board specifying
16 the time and place of the regular meeting.

17 B. Special meetings of the board may be called by
18 the chairman or by any three members of the board. Written
19 notice of the special meeting shall be sent to each member of
20 the board at least three days in advance of the special
21 meeting.

22 C. If not in violation of Subsection A or B of this
23 section, the rules of the board or the Open Meetings Act, the
24 chairman or any of three members of the board may cancel or
25 reschedule a meeting. "

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1 Section 3. Section 22-11-9 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 133) is amended to read:

3 "22-11-9. ACTUARY--FEES. --

4 A. The board shall employ the services of an
5 actuary. The actuary shall prepare a table of actuarial
6 equivalents for use of the board and the director in computing
7 the value of advanced, deferred or optional payment of benefits
8 pursuant to the Educational Retirement Act. The actuary shall
9 also study the financial operations of the Educational
10 Retirement Act and shall make written reports thereon to the
11 board.

12 B. The board shall pay the actuary a reasonable fee
13 for his professional services.

14 C. Unless otherwise required by the governmental
15 accounting standards board of the American institute of
16 certified public accountants, an actuarial report shall be
17 conducted at least once every five years."

18 Section 4. Section 22-11-15 NMSA 1978 (being Laws 1967,
19 Chapter 16, Section 139, as amended) is amended to read:

20 "22-11-15. FUND--REFUNDS--PAYMENTS. --

21 A. After filing written demand with the director, a
22 member is entitled to a refund of the total amount of the
23 member's contributions plus interest at a rate ~~[equal to~~
24 ~~seventy-five percent of the average rate earned by the fund~~
25 ~~during the five fiscal years preceding the fiscal year of~~

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1 ~~refund~~ set by the board, reduced by the sum of any disability
2 benefits previously received by the member, if:

3 (1) the member terminates employment for
4 reasons other than by retirement, disability or death;

5 (2) the member has exempted himself from the
6 Educational Retirement Act; or

7 (3) the member was not reemployed following a
8 period of disability during which he received disability
9 benefits.

10 B. The director may, at the request of a member,
11 make payment on behalf of the member for any or all of the
12 refund to an individual retirement account or a qualified
13 retirement plan that accepts rollovers.

14 C. If the amount of a deceased member's
15 contribution or residual contribution does not exceed the sum
16 of one thousand dollars (\$1,000) and no written claim is made
17 to the board for it within one year from the date of the
18 member's death, by his surviving beneficiary or the member's
19 estate, payment thereof may be made to the named beneficiary
20 or, if none is named, to the person the board determines to be
21 entitled to the contribution under the laws of New Mexico. Any
22 payment made by the board pursuant to this subsection shall be
23 a bar to a claim by any other person.

24 D. The interest provided for in Subsection A of
25 this section shall apply only to contributions paid to the fund

. 143843. 1

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1 after July 1, 1971 and on deposit in the fund for a period of
2 at least one fiscal year; provided that no such interest shall
3 be allowed on refunds of contributions that were paid into the
4 fund prior to July 1, 1971. "

5 Section 5. Section 22-11-26 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 149, as amended) is amended to read:

7 "22-11-26. DEATH DURING REEMPLOYMENT. --If a member dies
8 during a period of reemployment following retirement pursuant
9 to the Educational Retirement Act, the benefits to be paid
10 shall be determined according to the following:

11 A. if the member did not elect to exercise Option B
12 or C pursuant to Subsection A of Section 22-11-29 NMSA 1978 at
13 the time of first retirement, the member's beneficiary or
14 estate shall receive an amount equal to the sum of the member's
15 contributions, including contributions made by the member
16 during the period of last reemployment, plus accumulated
17 interest at the [average] rate [~~earned by the fund during the~~
18 ~~preceding five fiscal years~~] set by the board, less the total
19 benefits received prior to the last reemployment; or

20 B. if a retirement benefit has been paid to the
21 member pursuant to either Option B or Option C of Subsection A
22 of Section 22-11-29 NMSA 1978 prior to reemployment, the
23 reemployed member shall be considered as retiring on the day
24 preceding the date of death, and the benefits due the surviving
25 beneficiary, computed as of that date, shall be commenced

. 143843. 1

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1 effective on the date of death in accordance with the terms of
2 the option elected. "

3 Section 6. Section 22-11-27 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 150, as amended) is amended to read:

5 "22-11-27. DEFERRED RETIREMENT--RESTRICTION. --

6 A. A member eligible for retirement may continue in
7 employment and shall continue to pay contributions as provided
8 by the Educational Retirement Act.

9 B. A member may terminate his employment and retire
10 at any time after his age and his earned service-credit equal
11 the sum of seventy-five if the contributions he has made are
12 left in the fund.

13 C. A member having five years or more of earned
14 service-credit may terminate his employment and retire at any
15 time after reaching the age of sixty-five years if the
16 contributions he has made are left in the fund.

17 D. No member shall be on a retirement status while
18 engaged in employment unless the employment falls within
19 exceptions established by statute or rule of the board. "

20 Section 7. Section 22-11-29 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 152, as amended) is amended to read:

22 "22-11-29. RETIREMENT BENEFIT OPTIONS. --

23 A. Upon retirement pursuant to the Educational
24 Retirement Act, a member may elect, and such election shall be
25 irrevocable, to receive the actuarial equivalent of his

. 143843. 1

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1 retirement benefit, as provided in Section 22-11-30 NMSA 1978,
2 to be effective on his retirement in any one of the following
3 optional forms:

4 (1) OPTION B. A reduced annuity payable
5 during the member's life with provision that upon the member's
6 death the same annuity shall be continued during the life of
7 and paid to the beneficiary designated by the member in writing
8 at the time of electing this option; or

9 (2) OPTION C. A reduced annuity payable
10 during the member's life with provision that upon the member's
11 death one-half of this same annuity shall be continued during
12 the life of and paid to the beneficiary designated by the
13 member in writing at the time of electing this option.

14 B. In the case of Options B and C of Subsection A
15 of this section, the actuarial equivalent of the member's
16 retirement benefit shall be computed on the basis of the lives
17 of both the member and the beneficiary.

18 C. In the event that the named beneficiary of a
19 retired member who elected Option B or C of Subsection A of
20 this section at the time of retirement predeceases the retired
21 member, the annuity of the retired member shall be adjusted by
22 adding an amount equal to the amount by which the annuity of
23 the retired member was reduced at retirement as a result of the
24 election of Option B or C. The adjustment authorized in this
25 subsection shall be made as follows:

. 143843. 1

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1 (1) beginning on the first month following the
2 month in which the named beneficiary of a retiree dies
3 applicable to an annuity received by a retiree who retires
4 after June 30, 1987; or

5 (2) beginning on July 1, 1987 applicable to an
6 annuity received by a retiree who retired prior to July 1, 1987
7 and otherwise qualifies for the adjustment; provided, however,
8 no adjustment shall be made retroactively.

9 D. In the event of the death of the member who has
10 not retired and who has completed at least five years' earned
11 service credit, the member shall be considered as retiring on
12 the first day of the month following the date of death, and the
13 benefits due the surviving beneficiary, computed as of that
14 date, shall, except as provided in Subsection G of this
15 section, be commenced effective on the first day of such month
16 in accordance with the terms of Option B of Subsection A of
17 this section. In lieu of the provisions of Option B, the
18 surviving beneficiary may elect to receive payment of all the
19 contributions made by the member, plus interest at the rate
20 [~~earned by the fund during the preceding fiscal year~~] set by
21 the board reduced by the sum of any disability benefits
22 previously received by the member, or the surviving beneficiary
23 may choose to defer receipt of the survivor's benefit to
24 whatever age the beneficiary chooses up to the time the member
25 would have attained age sixty. If the benefit is thus

. 143843. 1

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1 deferred, it shall be calculated as though the member had
2 retired on the first day of the month in which the beneficiary
3 elects to receive the benefit. In the event of the death of
4 the beneficiary after the death of the member and prior to the
5 date on which the beneficiary has elected to receive the
6 beneficiary's benefit, the estate of the beneficiary shall be
7 entitled to a refund of the member's contributions plus
8 interest at the rate earned by the fund during the preceding
9 fiscal year, reduced by the sum of any disability benefits
10 previously received by the member.

11 E. In the case of death of a retired member who did
12 not elect either Option B or C of Subsection A of this section
13 and before the benefits paid to him have equaled the sum of his
14 accumulated contributions to the fund plus accumulated interest
15 at the [average] rate [~~earned by the fund during the preceding~~
16 ~~five fiscal years~~] set by the board, the balance shall be paid
17 to the beneficiary designated in writing to the director by the
18 member or, if no beneficiary was designated, to the estate of
19 the member.

20 F. No benefit shall be paid pursuant to this
21 section if the member's contributions have been refunded
22 pursuant to Section 22-11-15 NMSA 1978.

23 G. In the case of death of a member with less than
24 five years' earned service credit or death of a member who has
25 filed with the director a notice rejecting the provisions of

. 143843. 1

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1 Subsection C of this section, which notice shall be revocable
2 by the member at any time prior to retirement, the member's
3 contributions to the fund plus interest at the rate [~~earned by~~
4 ~~the fund during the preceding fiscal year~~] set by the board
5 shall be paid to the beneficiary designated in writing to the
6 director by the member or, if no beneficiary was designated, to
7 the estate of the member.

8 H. Any elections of either Option B or C of
9 Subsection A of this section on file with the director by
10 members who have not retired prior to June 30, 1984 are void. "

11 Section 8. Section 22-11-30 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 153, as amended) is amended to read:

13 "22-11-30. RETIREMENT BENEFITS. --

14 A. Retirement benefits for a member retired
15 pursuant to the Educational Retirement Act on or before June
16 30, 1967 shall be paid monthly and shall be one-twelfth of a
17 sum equal to one and one-half percent of the first four
18 thousand dollars (\$4,000) of the member's average annual salary
19 and one percent of the remainder of the member's average annual
20 salary multiplied by the number of years of the member's total
21 service credit.

22 B. Retirement benefits for a member retired
23 pursuant to the Educational Retirement Act on or after July 1,
24 1967 but on or before June 30, 1971 shall be paid monthly and
25 shall be one-twelfth of a sum equal to one and one-half percent

. 143843. 1

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1 of the first six thousand six hundred dollars (\$6,600) of the
2 member's average annual salary and one percent of the remainder
3 of the member's average annual salary multiplied by the number
4 of years of the member's total service credit.

5 C. Retirement benefits for a member retired
6 pursuant to the Educational Retirement Act on or after July 1,
7 1971 but on or before June 30, 1974 shall be paid monthly and
8 shall be one-twelfth of a sum equal to one and one-half percent
9 of the member's average annual salary multiplied by the number
10 of years of the member's total service credit.

11 D. Retirement benefits for a member retired
12 pursuant to the Educational Retirement Act on or before June
13 30, 1974 but returning to employment on or after July 1, 1974
14 for a cumulation of one or more years shall be computed
15 pursuant to Subsection E of this section. Retirement benefits
16 for a member retired pursuant to the Educational Retirement Act
17 on or before June 30, 1974 but returning to employment on or
18 after July 1, 1974 for a cumulation of less than one year shall
19 be computed pursuant to Subsection A of this section if his
20 date of last retirement was on or before June 30, 1967 or
21 pursuant to Subsection B of this section if his date of last
22 retirement was on or after July 1, 1967 but not later than June
23 30, 1971 or pursuant to Subsection C of this section if his
24 date of last retirement was on or after July 1, 1971 but not
25 later than June 30, 1974.

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1 E. Retirement benefits for a member age sixty or
2 over, retired pursuant to the Educational Retirement Act on or
3 after July 1, 1974 but not later than June 30, 1987, shall be
4 paid monthly and shall be one-twelfth of a sum equal to:

5 (1) one and one-half percent of the member's
6 average annual salary multiplied by the number of years of
7 service credit for:

- 8 (a) prior employment; and
- 9 (b) allowed service credit for service
10 performed prior to July 1, 1957, except United States military
11 service credit purchased pursuant to Paragraph (3) of
12 Subsection A of Section 22-11-34 NMSA 1978; plus

13 (2) two percent of the member's average annual
14 salary multiplied by the number of years of service credit for:

- 15 (a) contributory employment;
- 16 (b) allowed service credit for service
17 performed after July 1, 1957; and
- 18 (c) United States military service
19 credit for service performed prior to July 1, 1957 and
20 purchased pursuant to Paragraph (3) of Subsection A of Section
21 22-11-34 NMSA 1978.

22 F. Retirement benefits for a member age sixty or
23 over, retired pursuant to the Educational Retirement Act on or
24 after July 1, 1987 but not later than June 30, 1991, shall be
25 paid monthly and shall be one-twelfth of a sum equal to two and

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1 fifteen hundredths percent of the member's average annual
2 salary multiplied by the number of years of the member's total
3 service credit; provided that this subsection shall not apply
4 to any member who was retired in any of the four quarters
5 ending on June 30, 1987 without having accumulated not less
6 than 1.0 years earned service credit after June 30, 1987.

7 G. Retirement benefits for a member age sixty or
8 over, retired pursuant to the Educational Retirement Act on or
9 after July 1, 1991, shall be paid monthly and shall be one-
10 twelfth of a sum equal to two and thirty-five hundredths
11 percent of the member's average annual salary multiplied by the
12 number of years of the member's total service credit; provided
13 that this subsection shall not apply to any member who was
14 retired in any of the four consecutive quarters ending on June
15 30, 1991 without having accumulated at least one year earned
16 service credit beginning on or after July 1, 1991.

17 H. A member's average annual salary, pursuant to
18 this section, shall be computed on the basis of the last five
19 years for which contribution was made or upon the basis of any
20 consecutive five years for which contribution was made by the
21 member, whichever is higher. Unless otherwise required by the
22 provisions of the Internal Revenue Code of 1986, members shall
23 begin receiving retirement benefits by age seventy and six
24 months, or upon termination of employment, whichever occurs
25 later. "

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1 Section 9. Section 22-11-33 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 156) is amended to read:

3 "22-11-33. EARNED SERVICE CREDIT. --

4 A. Upon a member filing an application for
5 retirement or disability benefits, earned service credit for
6 the time of contributory employment shall be certified by the
7 director and subject to the review of the board.

8 B. A member shall be certified to have earned
9 service credit for that period of time when he was engaged in
10 prior employment. Earned service credit shall not be certified
11 for that period of employment for which the contributions have
12 been withdrawn from the fund by the member.

13 C. Earned service credit shall be certified for
14 periods of employment interrupted for some cause other than
15 retirement or disability. This shall be done if a member
16 withdrawing contributions from the fund for this period returns
17 to the fund, for each year of earned service credit desired, a
18 sum equal to the member's contribution to the fund during this
19 period and an additional sum as interest compounded annually
20 from the date the contributions were withdrawn to the date of
21 payment of the amount of returned contributions at the rate of
22 interest [~~earned by the fund during the five-year period~~
23 ~~immediately preceding the application for the earned service-~~
24 ~~credit]~~ set by the board. These payments may be made in
25 installments, and, if the payments made to the fund are

. 143843. 1

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1 insufficient for the restoration of any full year of earned
2 service credit, the member shall be certified to have acquired
3 earned service credit for that period of time which is
4 proportionate to the payments made."

5 Section 10. Section 22-11-34 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 157, as amended) is amended to read:

7 "22-11-34. ALLOWED SERVICE CREDIT. --

8 A. A member shall be certified to have acquired
9 allowed service credit pursuant to the Internal Revenue Code of
10 1986 for those periods of time when he was:

11 (1) employed prior to [~~the effective date of~~
12 ~~the Educational Retirement Act~~] July 1, 1967 in a federal
13 educational program within New Mexico, including United States
14 Indian schools and civilian conservation corps camps. This
15 service credit shall be allowed without contribution;

16 (2) engaged in military service that
17 interrupted his employment in New Mexico if he returned to his
18 employment within eighteen months following honorable
19 discharge. This service credit shall be allowed without
20 contribution;

21 (3) engaged in United States military service
22 or the commissioned corps of the public health service from
23 which he was honorably discharged if he contributes to the fund
24 a sum equal to ten and one-half percent of his average annual
25 salary for that period of time for which he has acquired earned

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1 service credit pursuant to the Educational Retirement Act and
2 subject to the federal Uniformed Services Employment and
3 Reemployment Rights Act of 1994 for each year of service credit
4 he desires to purchase. Average annual salary shall be
5 determined in accordance with rules promulgated by the board
6 but shall always be based on actual salaries earned by the
7 member where the actual salaries can be ascertained by the
8 board. The employer's contributions for service credit shall
9 not be paid by the employer. The purchase of service credit
10 provided in this section shall be carried out by the member
11 within three years after the date of the member's employment
12 following service; or

13 (4) employed:

14 (a) in a public school or public
15 institution of higher learning in another state, territory or
16 possession of the United States;

17 (b) in a United States military
18 dependents' school operated by a branch of the armed forces of
19 the United States;

20 (c) as provided in Paragraph (1) of this
21 subsection after ~~[the effective date of the Educational~~
22 ~~Retirement Act]~~ July 1, 1967; or

23 (d) in a private school or institution
24 of higher learning in New Mexico whose education program is
25 accredited or approved by the state board at the time of

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1 employment.

2 B. ~~[The member or employer under Paragraph (4) of~~
3 ~~Subsection A of this section shall contribute to the fund for~~
4 ~~each year of allowed service credit desired an amount equal to~~
5 ~~twelve percent of the member's annual salary at the time~~
6 ~~payment is made if the member is employed or twelve percent~~
7 ~~times the member's annual salary during the member's last year~~
8 ~~of employment if the member is not employed at the time of~~
9 ~~payment. Contributions paid for the member who is not employed~~
10 ~~shall bear interest at the average rate earned by the fund~~
11 ~~during the five fiscal year period immediately preceding the~~
12 ~~date of payment. Such interest shall run from the date the~~
13 ~~member last terminated employment to the date of payment.]~~

14 Effective July 1, 2001, the member or employer under Paragraph
15 (4) of Subsection A of this section shall contribute to the
16 fund for each year of allowed service credit desired an amount
17 equal to the actuarial value of the service purchased as
18 defined by the board. Payment pursuant to Paragraph (4) of
19 Subsection A of this section may be made in installments, at
20 the discretion of the board, over a period not to exceed one
21 year and, if the sum paid does not equal the amount required
22 for any full year of allowed service credit, the member shall
23 acquire allowed service credit for that period of time that is
24 proportionate to the payment made. Half credit may be allowed
25 without contribution for not more than ten years of the

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1 educational service described by Subparagraph (a) of Paragraph
2 (4) of Subsection A of this section if that service was prior
3 to June 13, 1953 and if the member was employed in New Mexico
4 prior to June 13, 1953 in a position covered by the Educational
5 Retirement Act or a law repealed ~~[thereby]~~ by that act. No
6 allowed service credit shall be purchased pursuant to Paragraph
7 (4) of Subsection A of this section unless the member is
8 currently employed by a local administrative unit.

9 C. No member shall be certified to have acquired
10 allowed service credit:

11 (1) under any single paragraph or the
12 combination of only Paragraphs (1) and (4) or only Paragraphs
13 (2) and (3) of Subsection A of this section in excess of five
14 years; or

15 (2) in excess of ten years for any other
16 combination of Paragraphs (1) through (4) of Subsection A of
17 this section.

18 D. The provisions of this section are made
19 applicable to the services described prior to as well as after
20 the effective date of the Educational Retirement Act. "

21 Section 11. Section 22-11-36 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 159) is amended to read:

23 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--
24 RE-EXAMINATIONS. --

25 A. Unless designated by the medical authority as

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1 being permanently disabled, to continue to receive disability
2 benefits, a member shall, on the anniversary date in each year
3 of his being placed on a disability status, present himself to
4 the medical authority for a medical re-examination. The
5 medical authority shall certify to the director after each
6 medical examination whether there is ~~[or is not]~~ a substantial
7 betterment of the member's disability. In the event a
8 substantial betterment of the disability is reported, the board
9 shall determine whether the member is totally disabled for
10 employment and unable to obtain and retain other gainful
11 employment commensurate with his background, education and
12 experience. If the board determines that the member is no
13 longer disabled, the payment of the disability benefits shall
14 cease.

15 B. Payment ~~[to a member]~~ of disability benefits to
16 a member shall be suspended if a certificate of medical re-
17 examination by the medical authority is not filed with the
18 director within thirty days after the date upon which the
19 member should have been re-examined where the failure to file
20 the certificate was due to the unexcused failure or the refusal
21 of the member to report for the medical re-examination.
22 Payment of disability benefits shall be resumed only after the
23 member has complied with the requirements of the Educational
24 Retirement Act. A member shall have no right or claim for
25 benefits withheld during a period of suspension.

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1 C. The board may, in its discretion, require
2 further or more frequent medical examinations of members having
3 a disability status.

4 D. A member receiving disability benefits who is
5 unable to report for a medical re-examination because of his
6 physical condition or because he resides outside the state
7 shall notify the director of this fact not later than fifteen
8 days in advance of the date for the medical re-examination.
9 The board shall designate a medical doctor [~~or doctors~~] in the
10 vicinity of the residence of the member to make the medical re-
11 examination and to report the findings to the board.

12 E. Upon a determination by the board, a member's
13 status may be changed from permanently disabled to temporarily
14 disabled or no longer disabled."

15 Section 12. Section 22-11-42 NMSA 1978 (being Laws 1967,
16 Chapter 16, Section 165, as amended) is amended to read:

17 "22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS
18 COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS. --

19 A. Except as specifically provided in the
20 Educational Retirement Act and the provisions of Subsections B
21 and C of this section, contributions or benefits mentioned in
22 the Educational Retirement Act shall not be assignable either
23 in law or in equity or be subject to execution, levy,
24 attachment, garnishment, guarantee fund or similar assessment
25 or any other legal process.

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1 B. A court of competent jurisdiction, solely for
2 the purposes of effecting a division of community property, may
3 provide by appropriate order for a determination and division
4 of a community interest in the pensions or other benefits
5 provided for in the Educational Retirement Act. In so doing,
6 the court shall fix the manner in which the warrants shall be
7 issued, may order direct payments by the board to a person with
8 a community interest in the pensions or benefits and may
9 restrain the refund of member or participant contributions.
10 The court shall not alter the manner in which the amount of
11 pensions or other benefits is calculated by the board or a
12 carrier or contractor for the alternative retirement plan, nor
13 shall the court cause any increase in the actuarial present
14 value of the pensions or other benefits to be paid by the board
15 or a carrier or contractor for the alternative retirement plan.
16 A payment, ordered by a court pursuant to this subsection,
17 shall only be made when the member or participant terminates
18 employment and requests a refund or when the member or
19 participant retires or is otherwise entitled to receive
20 benefits pursuant to the Educational Retirement Act. In no
21 case shall a court order pursuant to this subsection result in
22 more money being paid from the fund or from an alternative
23 retirement plan, whether in a lump sum or in monthly benefits,
24 than would otherwise be payable.

25 C. A court of competent jurisdiction, solely for

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1 the purposes of enforcing current or delinquent child support
2 obligations, may provide by appropriate order for withholding
3 amounts due in satisfaction of current or delinquent child
4 support obligations from the pensions or other benefits
5 provided for in the Educational Retirement Act and for payment
6 of such amounts to third parties. The court shall not alter
7 the manner in which the amount of pensions or other benefits is
8 calculated by the board or a carrier or contractor for the
9 alternative retirement plan. The court shall not cause any
10 increase in the actuarial present value of the pensions or
11 other benefits to be paid by the board or a carrier or
12 contractor for the alternative retirement plan. Payments made
13 pursuant to such orders shall only be made when the member or
14 participant terminates employment and requests a refund of
15 contributions or when the member or participant retires; in no
16 case shall more money be paid out, either in a lump sum or in
17 monthly benefits, of the fund or alternative retirement plan in
18 enforcement of current or delinquent child support obligations
19 than would otherwise be payable. In no case shall a court
20 order pursuant to this subsection result in more money being
21 paid from the fund or from an alternative retirement plan,
22 whether in a lump sum or in monthly benefits, than would
23 otherwise be payable."